

clearw^{ire}

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October 6, 2008

WT Docket No. 06-136

Office of the Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S.W.
12th Street Lobby, TW-A325
Washington, DC 20554

RE: Request for Waiver

Clearwire Corporation
Transition of the 2500-2690 MHz Band for BRS and EBS
Transition Area: BTA Number 013: Amarillo, Texas

Dear Ms. Dortch:

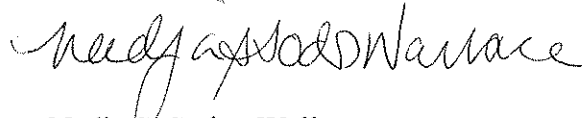
By this letter Clearwire Corporation ("Clearwire"), is requesting a waiver of Section 27.1235(b) with respect to the Transition of BTA Number 013: Amarillo. A copy of this Request for Waiver is being served on the following parties to that Transition:¹

Baypoint TV Inc., WQCL328
Catholic Diocese Of Amarillo, WND371
House High School, WNC458
House Municipal School, WNC455
Logan Municipal School, WLX882
Lubbock Christian University, WND243
Nextel Spectrum Acquisition Corp., B013P01, WCZ53, WLW861
The Northern Arizona University Foundation, Inc., WQCU381
Plateau Telecommunications, Inc., B013P02
San Jon Municipal School, WLX938
Tucumcari Municipal School, WLX980

¹ Since Clearwire Spectrum Holdings II, LLC is a wholly-owned subsidiary of Clearwire, copies of this request for waiver are not being served on them separately.

If there are any questions, please contact the undersigned at (202) 330-4011 or at nadja.sodoswallace@clearwire.com.

Sincerely,

A handwritten signature in cursive script that reads "Nadja S. Sodos-Wallace". The signature is written in dark ink and is positioned above the printed name.

Nadja S. Sodos-Wallace

cc: John Schauble
Lynn Ratnavale
Consuela Kearney
Kanwar Jolly

Request for Waiver

Clearwire Corporation ("Clearwire") hereby requests a waiver of Section 27.1235(b) of the Commission's Rules with respect to the post-transition notification requirements for BTA 013, Amarillo, Texas. On March 18, 2008, Nextel Spectrum Acquisition Corporation, a wholly-owned subsidiary of Sprint Nextel Corporation filed its Post-Transition Notification for BTA 013, certifying that it has fully implemented the Transition Plan for that market. Certain BRS and EBS licensees which are owned or leased to Clearwire and its wholly-owned subsidiaries were included in the Transition of the market, and thus, in the Post Transition Notification. Those licenses (including call sign and MBS channel) are as follows:

| | | |
|--|---------|----|
| Northern Arizona University Foundation | WQCU381 | B4 |
| Catholic Diocese of Amarillo | WND371 | C4 |
| Clearwire Spectrum Holdings LLC | WHT794 | E4 |
| Clearwire Spectrum Holdings LLC | WQFL828 | F4 |
| Lubbock Christian University | WND243 | G4 |

Section 27.1235 of the Commission's Rules states that a proponent must certify to the Commission when its Transition Plan has been completed. Under 27.1235(b), the post transition notification must provide the following information about each station operating in the MBS:

- (1) the station coordinates;
- (2) the make and model of each antenna;
- (3) the horizontal and vertical pattern of the antenna;
- (4) EIRP of the main lobe;

- (5) orientation;
- (6) height of antenna center of radiation;
- (7) transmitter output power; and
- (8) all line and combiner losses.

Instead of providing the specific confidential technical parameters for each of the numerous antennas and sectors, the Post Transition Notification for BTA 013 states that these stations “are not providing high power video services; therefore, they believe the technical parameters are not applicable and prefer not to provide site locations for competitive reasons.”

As a Commission licensee and the operator/lessee for these stations, Clearwire acknowledges that the Commission’s Rules indicate that the above information must be provided without exception. Under these facts and circumstances of these particular stations, however, Clearwire believes that the purpose behind the information sought in Section 27.1235(b) will not be served. Instead, Clearwire believes its provision may have the unintended consequence of disclosing otherwise confidential operational information. Accordingly, Clearwire hereby requests a waiver of Section 27.1235(b), so that it is not be required to provide this confidential information in a public document. Section 1.3 of the Commission’s Rules permits the Commission to waive any provision of the Rules if “good cause is shown.”¹ Clearwire submits that good cause exists for grant of this waiver as set forth below.

¹ 47 C.F.R. §1.3.

The Requirement To Provide This Information Has Not Been Justified

First, this language was initially proposed by the WCA/NIA White Paper in conjunction with its proposal for site specific licensing in the MBS, a proposal contemplating high power vide use, and that the Commission ultimately rejected. The Commission did not otherwise adopt site specific licensing, and in fact, adopted geographic licensing for all 2.5 spectrum, including the MBS. However, this requirement nevertheless remained in the rules, almost verbatim, with no explanation. It appears that this requirement is a holdover from the originally proposed site specific licensing rules applicable to cases where high power video was being transmitted over the MBS. The Commission never explained what the purpose of this rule was, nor how it would benefit the public interest, Clearwire can only surmise its reason for being included.

Negative Competitive Impact

Second, providing this information in a publicly available document would give competitors confidential information about Clearwire's broadband network, specifically where its cell sites are located and how it will be operating in the market. The rules do not otherwise generally require that technical parameters for broadband services be provided, except in very limited situations (such as when international borders are implicated), which means that the competitor would not be required to provide this information. But when such broadband services are provided using the MBS, the Commission requires that this information be provided. Because Clearwire is using the MBS spectrum in its provision of its broadband service (not for high-power vide operation), rather than letting it remain unused, it is being required to provide its competitors with an effective blueprint to its operations in this transitioned market. If no

use of the MBS channels was currently being made in the system, this information would remain confidential. Section 27.1235(b) has the perverse effect of requiring the disclosure of confidential potentially sensitive network deployment data just because Clearwire is making use of the MBS, rather than letting it sit fallow in this market.

The Rule Is Easily Avoided, And Thus, Provides No Public Interest Benefit

Finally, it is apparent that it would be relatively simple for operators to avoid provision of this information. The rules only require such information be provided to the Commission if the MBS is being used when the Post Transition Notification is filed. Thus, an operator could simply turn on a system using only LBS and UBS channels, complete the Transition in that market and file its Post Transition Notification. Immediately after the Post Transition Notification has been filed, an operator could begin using the MBS channels without needing to provide any technical parameters to the Commission at that time. In addition, an operator could operate its system using the MBS channels, turn them off, file the Post Transition Notification, and then turn the channels back on, again with no requirement to provide the technical parameters to the Commission. In addition, once the information is provided as part of the Post Transition Notification, there is no requirement to keep it current. Thus, an operator could provide the MBS technical parameters as part of the Post Transition Notification and change them, for any variety of reasons, the next day, without any further notification requirement. The information filed as part of the Post Transition Notification would be obsolete immediately. The fact that an operator has no obligation to update the MBS technical information after the filing of the Post Transition Notification obviates any claim that this information will be relied upon by an operator in an adjacent market.

Conclusion

Based upon good cause being shown, Clearwire requests that the Commission waive 27.1235(b) of its rules, and process the Post Transition Notification filed with respect to the Transition of BTA 013, Amarillo, Texas. Requiring Clearwire to provide this information could have an unintended competitive impact with no resulting public interest justification or benefit.